

ATTACHMENT A: FINDINGS AND CONCLUSIONS CITY OF LANGLEY SHORELINE MASTER PROGRAM PERIODIC REVIEW AMENDMENT

SMP Submittal accepted October 27, 2021, Ordinance No. 1080
Prepared by Department of Ecology on November 19, 2021

INTRODUCTION

The Department of Ecology (Ecology) Findings and Conclusions (presented herein as Attachment A), provide the factual basis for our decision on the City of Langley (City) Shoreline Master Program (SMP) periodic review and associated amendment. This document is divided into three sections providing an **Introduction**; the **Findings of Fact** regarding the amendment history, the initial determination of consistency, local and state review and the final submittal summary; and **Conclusions**. A summary of comments received during the joint public comment period is provided in the Amendment History and Review Process section.

Brief Description of Proposed Amendment

The City is undergoing a statutorily required periodic review of their Shoreline Master Program (SMP) and has submitted an amendment to Ecology for approval. As part of this review, the City chose to utilize the joint review process set forth in WAC 173-26-104. As part of this process on July 12, 2021, per WAC 173-26-104(3)(b), Ecology provided the City with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and applicable rules. The City's final adopted resolution incorporated all our required and recommended changes provided as part of the initial determination.

FINDINGS OF FACT

Need for amendment

The City's comprehensive update to their SMP went into effect in 2013. Now, the proposed amendment is needed to comply with the statutory deadline for a periodic review of the Langley Shoreline Master Program pursuant to RCW 90.58.080(4).

SMP provisions to be changed by the amendment as proposed

The City prepared a checklist and analysis documenting the proposed amendment. The amendment is intended to:

- Bring the SMP into compliance with requirements of the Shoreline Management Act or state rules that have been added or changed since the City completed their SMP comprehensive update;
- Ensure the SMP remains consistent with local amended comprehensive plans and regulations; and
- Incorporate amendments deemed necessary to reflect changed circumstances, new information, or improved data.

Langley's SMP is a standalone planning document that outlines goals and policies for the shoreline of the City and establishes regulations for development occurring in that area. Some critical areas protection standards from the City's Critical Areas Ordinance have been incorporated into the City's SMP by reference.

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The SMP is divided into eight chapters:

1. Introduction
2. Shoreline Vision and Goals
3. Shoreline Jurisdiction and Environment Designations
4. General Use Policies and Regulations
5. Shoreline Modification Policies and Regulations
6. Specific Shoreline Use Policies and Regulations
7. Administrative Provisions
8. Definitions

The City's SMP regulates shoreline uses and development along approximately 1.7 miles of marine waters in Saratoga Passage.

In addition to editorial changes modifying terms used and general edits to correct or update syntax, formatting, citations, and references throughout the SMP, the City identified the following amendments to the Langley SMP:

Chapter 1 Introduction

- Deleted section 1.7 "Shoreline Jurisdiction" - this topic is covered verbatim under section 3.1.

Chapter 2 Shoreline Vision and Goals

- Under Section 2.1 "Shoreline Vision" a paragraph has been added regarding sea level rise.
- A reference to ADA compliance was added to the Circulation goal under 2.2.5.B.1.

Chapter 3 Shoreline Jurisdiction and Environment Designations

- A new policy has been added under all Shoreline Designations that encourages uses and developments to adapt to sea level rise. [3.3.2.C.7; 3.3.3.C.9; and 3.3.4.C.10]
- Under 3.3.3 "Urban," and 3.3.4 "Aquatic" the locational descriptions have been slightly revised to ensure map and written descriptions align.
- A new provision has been added under the Aquatic SED management policies to encourage collaboration with other entities that regulate the aquatic environment, and specifically calls out collaboration with Washington Department of Natural Resource on derelict and abandoned vessels. [3.3.4.C.11]
- "Figure 2" the "Shoreline Environmental Designations" map, has been deleted from this Chapter and moved to Appendix A.

Chapter 4 General Use Policies and Regulations

- Non-substantive editorial changes are made throughout this chapter, including revising references of "flood control works" to "Structural flood hazard reduction measures".
- Under Shoreline Use Policies 4.2.1, two new policies (16 & 17) are made regarding developing information on sea level rise and considering/revisiting sea level rise language during SMP updates.
- Under Shoreline Use Regulations 4.2.2, regulation 14 was removed which limited new or expanded building heights to 18.5 feet above a "deck surface".
- Four (4) new Shoreline Use Regulations were added under 4.2.2.14 addressing sea level rise information in application materials, sea level rise consideration in geotechnical reports, outreach

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to applicants to encourage increased setbacks for new development, and condition of approval requiring sea level rise threat notice on title.

- Under 4.3.2, Environmental Protection and Critical Areas regulations are modified to incorporate appropriate wetland, stream, flood hazard areas provisions from LMC 16.20, ensure only necessary sections of the incorporated provisions of LMC 16.20 are excluded from the SMP, and provide updated wetland rating, delineation, and buffers standards.
- A new Flood Hazard Management policy was added under 4.4.1.7.
- Reference to consideration of sea level rise is added to under Public Access General Regulations 4.5.2.A.9.
- Under 4.6 regarding Archeological, Historic and Cultural Resources, a references to other applicable state statues and rules are updated.
- Regulations associated with Shoreline Vegetation Management, 4.8.2 are modified to give preference to mitigation closest to the ordinary high water mark, removing reference to view corridors (which the City has not established), further limiting significant vegetation removal for visual access.
- The Permitted Shoreline Uses table (Table 1) is modified to allow a buoy without a conditional use permit in all SEDs and remove the prohibition on detached single-family residential uses in the Urban SED.
- A clarification is made in the Development Standards Table (Table 2), regarding maximum height in the Central Business SED. Instead of the standard 30 feet with a reference to the zoning code, the table now says between 25 and 47 feet, which is consistent with zoning regulations LMC 18.16.070 and 18.16.075.
- A foot note regarding the marine buffer is amended to state that *“in the absence of a steep slope, the 50 foot marine buffer starts at the OHWM”*.

Chapter 5 Shoreline Modification Policies and Regulations

- Under Shoreline Stabilization new policy and regulations are added to require consideration of sea level rise (Policy 5.1.1.8 and Regulations 5.1.2.3.b, 5.1.2.15.i and 5.1.2.20.f.)
- Under Shoreline Stabilization Regulations 5.1.2.17, maximum height limitations on proposed bulkheads are removed to better accommodate potential sea level rise adaptation.
- Throughout the chapter, “critical saltwater habitat” is added to regulations that address habitat.
- Under 5.3.2.12 the 200 square foot size limitation and 45% open space requirement is revised to no longer apply to non-residential floats.
- Under 5.3.2.23, the City removed the dock and float maximum width standard.
- Under Fill and Excavation policies (4.5.1.10) a statement is added that when fill is permitted on tideland *“Preference should be given to provisions that have a lesser impact on ecological functions”*.
- Under 5.6.2.4 regarding clear and grade regulations, the regulation has been revised to require a landscaping plan, a performance bond and vegetation re-establishment within 5 years instead of 2.
- Under 5.7.2.11 regarding restoration policies, a reference to WAC 173-26-215 is added.

Chapter 6 Specific Shoreline Use Policies and Regulations

- Where ‘habitat’ is referenced, “critical saltwater habitat” is added.
- Forest Practices was added to the list of prohibited uses.

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- Under Boating Facilities – South Whidbey Harbor at Langley (Maria) Policies 6.4.1.18, the following policy is added: *“Marina expansion should be designed and constructed to accommodate for sea level rise to mitigate for the impacts of sea level rise”* and a statement is added regarding consistency with WAC 173-26-231(3)(b).
- Under boating facilities 6.4.2.A.11 a new regulation requires consideration of sea level rise.
- Under Boating Facility parking and circulation regulations, 6.4.2.C.1.a, is revised to allow for a parking ratio of less than one vehicle space per two slips.
- Under Commercial regulations, provisions requiring a 20 foot setback adjacent to Seawall Park are removed because a 25 foot marine buffer is provided at this location elsewhere in the code.
- Regulations under 6.8.2.4 residential development, are modified to eliminate minimum thresholds for drainage plans, allow septic drainfields to leach closer to the bluff (if it is approved through a geotechnical report), and add a cross-reference to view protection codes in 4.9.2.
- Under 6.10 a new utility policy and regulation are added requiring consideration of sea level rise protections.

Chapter 7 Administrative Provisions

- Under 7.2 a new provision is added to the applicability section regarding Shoreline Master Program exceptions under WAC 173-27-044 and 173-27-045.
- Under 7.3 Administrative Authority and Responsibility, and 7.6.1.3 regarding Shoreline Permit requirements, a provision is revised to require a Hearing Examiners decision on all new or expanded overwater developments or uses, while previously there was a 1,000 square foot expansion threshold.
- Modifications to 7.6 increase consistency with WAC 173-27. Including clarifying that a Shoreline Conditional Use Permit or Shoreline Variance could be required even when an SDP is not required, updating cost thresholds to match OFMs most recent cost threshold, adding the newest ADA retrofits exemption, and clarifying that drainage tightlines qualify as SFR utility appurtenances.
- Under 7.6.4.6, a statement has been added that a variance cannot be granted for a prohibited use.
- Under 7.7.8, a policy is added regarding permit filing procedures per checklist item 2017d.
- Under 7.9 is modified to remove redundant non-conforming uses language, address additional development or expansions of nonconforming uses and developments, and clarify when such an action would require a shoreline variance.

Chapter 8 Definitions

- A new introductory statement has been added that definitions in the SMP override definitions outlined in other sections of the Langley code.
- Minor grammatical revisions are proposed throughout this section and are not considered “revised definitions”.
- Definitions are added for the following terms: flood hazard reduction measures, Nonconforming development or nonconforming structure, Nonconforming lot, Nonconforming use, and significant vegetation removal.
- Definitions for the following terms are revised: appurtenance, development, feasible, floodway, and marina.
- Definitions for the following terms are deleted: Nonconforming use or Development, and view corridor.

Amendment History, Review Process

The City prepared a public participation program in accordance with WAC 173-26-090(3)(a) to inform, involve and encourage participation of interested persons and private entities, tribes, and applicable agencies having interests and responsibilities relating to shorelines. An important element of the public participation plan is the City's Shoreline Master Plan [website](#)¹. In addition, the City created and maintains a sea level rise and coastal planning [website](#)² that includes sea level rise projections, photos, videos, workshop information, and resources. The City hired a consultant to develop an SMP gap analysis to inform the scope of the periodic review and starting point for draft amendments.

The City used Ecology's checklist of legislative and rule amendments to review amendments to chapter 90.58 RCW and department guidelines that have occurred since the master program was last amended, and determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i). The City also reviewed changes to their comprehensive plan and development regulations to ensure that shoreline master program policies and regulations remain consistent in accordance with WAC 173-26-090(3)(b)(ii). The City considered whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data in accordance with WAC 173-26-090(3)(b)(iii). The City consulted with Ecology and solicited comments throughout the review process.

The City and Ecology held a joint local/state comment period on the proposed amendments following procedures outlined in WAC 173-26-104. The comment period began on February 25, and continued through March 29, 2021. A virtual public hearing was held on March 11, 2021.

The City provided notice to local parties, including a statement that the hearings were intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii). Ecology distributed notice of the joint comment period to state interested parties and tribal governments on February 24, 2021.

We received thirteen (13) distinct comments from three (3) commenters, as outlined in the Comment Response Matrix prepared by the City. Comments focused kelp conservation and sea level rise.

The City made several changes to the SMP amendment in response to comments. In response to comments from the Washington Department of Natural Resources, the City added references to 'critical saltwater habitat' where kelp and sea grass or shoreline ecological functions are addressed. The City also added new provision under 4.3.2.E.2 regarding critical saltwater habitat and DNR regulations on state owned aquatic tidelands. In response to a citizen comment, the City added a definition for sea level rise.

Ecology has reviewed all the comments received during the joint review process along with the City's response to issues raised and corresponding changes to the SMP amendment. Ecology finds the City's response as consistent with statutory obligations applicable to conducting a periodic review of their SMP. The City considered whether to incorporate amendments to reflect changed circumstances, new information, or improved data, as provided or raised during the comment period. Ecology concurs, that

¹https://www.langleywa.org/departments/community_planning_and_building_department/shoreline_master_plan.php

²https://www.langleywa.org/departments/community_planning_and_building_department/sea_level_rise_and_coastal_planning.php

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no additional amendments related to public comments received on the amendment are warranted at this time, pursuant to the Periodic Review procedures in WAC 173-26-090(3)(b)(iii).

Initial Determination of Consistency

As part of this review, the City chose to utilize the joint review process set forth in WAC 173-26-104. After the joint City-State comment period and hearing, and consideration of the comments received, the City submitted the proposed amendment to Ecology for initial review. Ecology is required under WAC 173-26-104(3)(b) to provide the City with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and applicable rules.

The proposed SMP amendments were received by Ecology on June 4, 2021 for initial state review and verified as complete on June 7, 2021. This began Ecology's review and initial determination.

Ecology provided the City a formal written statement, documenting an initial determination of consistency with state requirements. In making this determination, Ecology considered the record compiled by the City through their update, including comments received and the City's responses to these comments, and concluded that portions of the proposed amendment were not consistent with applicable laws and rules.

On July 12, 2021, we provided a written statement describing the specific areas of concern and changes necessary. Ecology identified four (4) required changes. Ecology identified issues with proposed changes to pier development standards, sea level rise provisions, and inconsistencies related to the incorporation of the City's critical area ordinance. Ecology also identified three (3) recommended changes intended to improve clarity and implementation of the proposed amendments.

After review by Ecology of the complete initial record submitted and all comments received, Ecology determined that the City's proposed amendments, subject to and including Ecology's required changes, are consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions). Ecology concluded that if the issues identified as required and recommended changes in the initial determination were resolved prior to local adoption, Ecology anticipated being able to approve this SMP Periodic Review amendment upon formal submittal per WAC 173-26-110.

The City considered the changes identified in Ecology's initial determination and accepted all required and recommended changes prior to local adoption. In between the initial determination and local adoption the City made a number of non-substantive grammatical revisions in addition to the required and recommended changes.

Final Submittal

With passage of Ordinance 1080 on October 18, 2021, the City authorized staff to forward the proposed amendments to Ecology for formal approval. The locally adopted SMP amendment was received by Ecology for final state review and verified as complete on October 27, 2021. This began Ecology's final review of the amendment for consistency with the SMA and SMP Guidelines.

At the conclusion of our formal review, Ecology's Director must decide to approve the program as submitted, approve it with required changes and/or recommended changes, or deny approval.

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Consistency Review

Consistency with Chapter 90.58 RCW

The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

Consistency with applicable guidelines (Chapter 173-26 WAC, Part III)

The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions). This includes review for compliance with the SMP amendment criteria found in WAC 173-26-201(1)(c) along with review of the SMP Periodic Review Checklist completed by the City.

Consistency with SEPA Requirements

The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendments on February 22, 2021.

Other Studies or Analyses supporting the SMP amendment

In addition to the periodic review checklist and public participation plan, Ecology also reviewed the following document prepared for the City in support of the SMP amendment:

- *City of Langley Shoreline Master Plan Sea Level Rise Assessment*. Dated June 2021. This document provides a review of existing pertinent sea level rise data, a review of the City's public input process related to sea level rise, a vulnerability assessment, and potential policies and regulations to incorporate into the SMP.
- *Administrative Interpretation for a Minor Conditional Use Permit for Mooring Buoys*. This document is dated March 14, 2017 and provides justification for revisions to mooring buoy allowances in the use table.
- A memorandum from Brigid Reynolds (Langley Planner) to Railin Santiago (Ecology Planner) dated June 29, 2021 which provided additional justification documentation related to 1. Changing buoys from a SCUP to a Permitted use; 2. Revising detached single-family in Urban from prohibited to permitted; and 3. Revising non-residential moorage dimensional standards.

CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the City proposed amendments are consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions).

Ecology concludes that the proposed amendment satisfies the criteria for approval of amendments found in WAC 173-26-201(1)(c). This includes the conclusion that approval of the SMP amendment will not foster uncoordinated and piecemeal development of the state's shorelines (WAC 173-26-201(1)(c)(i) and will assure no net loss of shoreline ecological functions will result from implementation of the amended master program (WAC 173-26-201(1)(c)(iv) and WAC 173-26-186(8)).

Ecology concludes that those SMP segments relating to shorelines of statewide significance continue to provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5)).

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Ecology concludes that the City has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 and WAC 173-26-104 regarding public and agency involvement in the SMP review and amendment process, including conducting public hearings, providing notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the City has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the City SMP submittal to Ecology was complete pursuant to the requirements of WAC 173-26-090, WAC 173-26-104, and WAC 173-26-110.

Ecology concludes that we have complied with the state’s procedural requirements for review and approval of shoreline master program amendments as set forth in RCW 90.58.090, WAC 173-26-104, WAC 173-26-110, and WAC 173-26-120.

Ecology concludes that with this action the City has completed the required process for periodic review in accordance with RCW 90.58.080(4) and applicable state guidelines (WAC 173-26).

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed periodic review amendment is consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules. Ecology approval of the proposed amendment is effective 14 days from Ecology’s final action approving the amendment.